IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Misc. Recall Application No. 3104 of 2005

in

Writ Petition No. 281 of 2004 (S/B)

Km. Neema	……..	Petitioner/Applicant
	Versus	
State of Uttaranchal and other.	…….	Respondents
	……..	

Mr. K.S. Verma, Advocate, counsel for the applicant/petitioner
Mr. K.P. Upadhayaya, Standing Counsel for the State of Uttaranchal
Mr. B.D. Kandpal, Standing Counsel for the respondent no. 2.

Hon'ble Cyriac Joseph, C.J.
Hon'ble M.M. Ghildiyal, J.

The applicant is the petitioner in Writ Petition No. 281 of 2004 (S/B) which was dismissed by this court on 21.05.2005 observing that the writ petition has become infructuous. The prayer in this application is for recalling the said order dated 21.05.2005.

We have heard learned counsel for the applicant and the learned counsel for the respondents.

The petitioner belongs to Scheduled Caste. When the Uttaranchal Public Service Commission invited applications for the post of Upper Varg Sahayak (Upper Division Assistant) / Personal Assistant/ Console Operator-Data Entry Assistant, the petitioner submitted application for the post of Console Operator-cum-Data Entry Assistant. Out of the total eight posts, two reserved for Scheduled Caste, one for Backward Class and the remaining five were to be filled up by general category

candidates. The petitioner appeared in the pre-examination and passed. Thereupon, she was allowed to appear in the main examination held on 06.07.2004 and in the practical examination held on 23.08.2004. However, she was not called for interview. When the petitioner came to know that no scheduled caste candidate was selected, she filed the writ petition praying for the following reliefs:

> " a. Issue a writ, order or direction in the nature of Mandamus commanding the respondents not to complete the selection process for the post of Console Operator cum Data Entry Assistant which is going to be completed on 15.09.2004, during the pendency of the present petition.
>
> b. Issue a writ, order or direction in the nature of Mandamus commanding the respondents to call the petitioner for interview for the post of Console Operator cum Data Entry Assistant.
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> c. Issue any other order or direction which this Hon'ble Court may deem it fit and proper under the circumstances of the case.
>
> d. Award cost of the petition."

The second respondent filed a counter affidavit on 06.12.2004 stating that though two posts were reserved for scheduled caste, none of the scheduled caste candidates was found suitable for the post and hence none of them was selected for appointment. The selection was to be conducted in three stages, namely, preliminary examination, main examination and interview. Only candidates who qualified in the preliminary examination would be eligible to appear in the main examination and only those who qualified in the main examination would be eligible to be called for interview. For the post of Console Operator cum Data Entry Assistant, the main examination consisted of two parts, namely, written test and computer operation. The petitioner appeared and passed in the preliminary examination and qualified to

appear in the main examination. But she did not qualify in the written test of the main examination, even though she qualified in the practical test of computer operation. When the aggregate marks of the written test and practical test were taken into account, the petitioner did not qualify in the main examination by obtaining the minimum qualifying marks fixed for scheduled caste candidates. Hence she was not called for interview. It was further stated in the counter affidavit that none of the scheduled caste candidates was found suitable for the post and hence none of them was selected for appointment.

When the writ petition came up for hearing on 21.05.2005, there was no representation for the petitioner. Mr. B. D. Kandpal, learned counsel for the second respondent submitted that the selection process for the post of Console Operator cum Data Entry Assistant had already been completed and the selected candidates had already been appointed. In view of the above submission, the writ petition was dismissed as infructuous.

It is in the above circumstances that the petitioner has filed this application for recall of the order dated 21.05.2005. According to the learned counsel for the petitioner, the writ petition was wrongly dismissed as it had not become infructuous. But we do not find any merit in this contention. In the counter affidavit filed on 06.12.2004 itself, it was stated that the final selection had already been made by the Public Service Commission and the names of the selected candidates had been sent to the Government by the Commission. In the rejoinder affidavit filed by the petitioner, the above averment in the counter affidavit was not denied. Even today, learned counsel for the petitioner is not in a position to point out any material to show that the selection process had not been completed and appointment of the selected candidates had not been made before 21.05.2005. Hence, the submission made by Mr. B. D. Kandpal, learned counsel for the second respondent on 21.05.2005 should be deemed to be factually correct. If

the statement was factually correct, then only remaining question is whether the writ petition had become infructuous on 21.05.2005.

The main prayer in the writ petition was for a direction to the respondents to call the petitioner for interview for the post of Console Operator cum Data Entry Assistant. The stage of interview was already over and the candidates had already been selected and appointment had been made before 21.05.2005. The petitioner was not called for interview and was not selected as she was not found suitable for the post. The other prayer in the writ petition was for a direction to the respondents not to complete the selection process for the post of Console Operator cum Data Entry Assistant which was going to be completed on 15.09.2004 during the pendency of the writ petition. Obviously, that prayer also had become infructuous on 21.05.2005 as the selection process had already been completed.

Even on merits, the petitioner was not entitled to succeed in the writ petition. The counter affidavit categorically stated that the petitioner was not called for interview and was not selected, on the ground that she was found not suitable for the post in view of the fact that she failed to obtain the minimum qualifying marks in the final examination consisting of written test and practical test. The writ petition did not contain any pleading or prayer assailing the decision of the Public Service Commission prescribing the minimum qualifying marks for the scheduled caste candidates. Even after the counter affidavit was filed, the writ petition was not amended to incorporate any such pleading or prayer. In the absence of a proper challenge against the decision of the Public Service Commission to prescribe the minimum qualifying marks for scheduled caste candidates in the main examination, the petitioner cannot successfully challenge the decision of the Public Service Commission not to call her for interview.

In the above circumstances, we don not find any valid ground to recall the order dated 21.05.2005

The application is dismissed.

(M.M. Ghildiyal, J.) 28.07.2005

(Cyriac Joseph, C.J.) 28.07.2005

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